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Human rights to safe drinking water and sanitation

Note by the Secretariat

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, submitted pursuant to Assembly resolution 64/292 and Human Rights Council resolution 33/10.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation

Summary

The Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, submits the present report on the principle of accountability in the context of the realization of the human rights to water and sanitation pursuant to Human Rights Council resolution 33/10. He analyses in the report the concept of accountability on the basis of three dimensions: roles, responsibility and standard; providing explanations and justification; and compliance through enforcement. He also provides guidance and examples of how rights holders can hold States and other relevant actors to account for ensuring the enjoyment of the human rights to water and sanitation and for their actions, inaction and decisions that affect the realization of those rights.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, was mandated to identify challenges and obstacles to the full realization of those rights, as well as protection gaps, good practices and enabling factors. In the present report, he has focused on the principle of accountability in the context of the realization of human rights to water and sanitation and aimed to clarify the concept of accountability and the implications for the human rights to water and sanitation. He has sought to provide guidance and examples of how rights holders may hold States and other accountable actors to account for ensuring the enjoyment of the human rights to water and sanitation and for their actions and decisions that affect the realization of those rights.

2. In order to consult various stakeholders, the Special Rapporteur sent questionnaires to States and other stakeholders, which elicited a total of 28 submissions. [1] In addition, he convened a brainstorming round table on 13 September 2017 and an expert consultation on 14 and 15 May 2018. Finally, he consulted the general public and other stakeholders with a series of questions through social media sites throughout June 2018.[2]

A. Why accountability?

3. Different actors in the water and sanitation sector have explored the concept of accountability and aimed to formulate how the concept might be applied to the specificities of the sector.[3] However, there is no widely understood or agreed definition of the concept, in particular in the context of the realization of the human rights to water and sanitation. Therefore, clarification of the concept is essential for that sector, which involves a variety of actors related to the realization of those rights, including government entities (i.e. central and local governments and regulators), international organizations, transnational and national corporations and non-governmental organizations (NGOs).

4. Furthermore, globalization and the neoliberal wave have weakened the role of the State in the provision and regulation of water and sanitation services, and the imbalance of power has at times affected the exercise of the human rights to water and sanitation. This raises questions as to the effective regulation of private service providers and, in turn, poses challenges to accountability mechanisms, especially considering that those services are provided through a system of natural monopoly, with usually only one provider for a given territory. Another unique feature of the water and sanitation sector is the widespread presence of informal service providers that are not regulated and operate without a licence and that, as a result, may not be held accountable. Similarly, in the context of a crisis, there exists no clear

[1] See http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/PrincipleOfAccountability.aspx.

[2] www.twitter.com/srwatsan and www.facebook.com/srwatsan.

[3] See, among other references, Office of the United Nations High Commissioner for Human Rights (OHCHR) and Centre for Economic and Social Rights, *Who will be accountable? Human Rights and the Post-2015 Development Agenda* (Geneva, OHCHR; Brooklyn, New York, Centre for Economic and Social Rights, 2013); United Nations Development Programme (UNDP) Water Governance Facility/United Nations Children's Fund (UNICEF), *Accountability in WASH: Explaining the Concept* (2015); End Water Poverty and others, *Global Review of National Accountability Mechanisms for SDG 6* (London, 2018); and Benjamin Mason Meier and Yuna Kim, "Human rights accountability through treaty bodies: examining human rights treaty monitoring for water and sanitation", *Duke Journal of Comparative & International Law*, vol. 26, No. 1 (November 2015).

accountability framework based on human rights to provide guidance and standards, which, combined with the urgency of the situation in which actors operate, creates a gap where no one is held accountable.

B. Conceptualizing accountability

5. The concept of accountability is multifaceted. From an evaluative approach, "accountability" is seen as a broad value covering other values and goals, such as good governance, democracy, participation, transparency, equity, efficiency, integrity and responsibility.[4] In a broader sense, accountability is used to qualify a state of affairs or the performance of an actor. It is related to "responsiveness" and to a "sense of responsibility", that is, a willingness to act in a transparent, fair and equitable way.[5] From an analytical approach, accountability is described as involving the "justification of an actor's performance vis-à-vis others, the assessment or judgment of that performance against certain standards, and the imposition of consequences", if the actors fail to meet applicable standards.[6]

6. Accountability is a core human rights principle and is often considered together with the right of access to an effective remedy and with international and national mechanisms that provide redress to victims for human rights violations. In the context of transitional justice, accountability is discussed in conjunction with monitoring, truth-seeking, justice and reconciliation. Accountability is also explained as "the means by which individuals and communities take ownership of their rights and ensure that States, as primary duty-bearers, respect, protect and fulfil their international and national obligations".[7]

7. The essence of both the principle of accountability and human rights is about balancing power in order to protect the most marginalized and those living in the most vulnerable situations. The principle of accountability aims to mediate the relationship between people as rights holders and, in particular, those that wield power and affect the enjoyment of the former's rights by exercising State-like powers or decisive and asymmetrical power that has considerable potential impact on people.[8] In this sense, accountability may be characterized as having two main functions: a corrective function, addressing individual or collective grievances and sanctions for wrongdoing; and a preventive function, clarifying aspects of policy or service delivery as good practices, and aspects that need to be adjusted to apply the principle of accountability effectively.[9]

8. Another aspect of accountability is the empowerment of rights holders to request information and actions to be taken so that they may scrutinize the policies and practices of States and other actors and to have them make necessary changes. This requires spaces for participation, transparency, access to information, monitoring,

[4] Mark Bovens, "Two concepts of accountability: accountability as a virtue and as a mechanism", *West European Politics*, vol. 33, No. 5 (2010).

[5] Mark Bovens, "Public accountability: a framework for the analysis and assessment of accountability arrangements in the public domain", 2005.

[6] Jutta Brunnée, "International legal accountability through the lens of the law of State responsibility", *Netherlands Yearbook of International Law*, vol. 36, No. 1 (December 2005).

[7] Catarina de Albuquerque and Virgina Roaf, *On the Right Track: Good Practices in Realising the Rights to Water and Sanitation* (Lisbon, 2012).

[8] Arne Vandenbogaerde, *Towards shared accountability in international human rights law: Law, Procedures and Principles*, vol. 7, *Law and Cosmopolitan Values* (Mortsel, Belgium, Intersentia, 2016).

[9] OHCHR and Centre for Economic and Social Rights, *Who will be accountable? Human Rights and the Post-2015 Development Agenda*, p. ix.

assessment and oversight of progress or possible setbacks in the realization of the rights, as well as enforcement mechanisms.

9. Several types of mechanisms support the effective implementation of the various dimensions of accountability. Some mechanisms include institutionalized oversight structures and performance assessments designed to ensure horizontal accountability within organizations or institutions, allowing the imposition of binding or non-binding judgments, sanctions and recommendations. Accountability is also implemented vertically, through bodies with judicial or corrective powers, to which rights holders have access for claiming their rights and enabling the remediation of any adverse effect of non-compliance with human rights. Another vertical mechanism is the special procedures of the Human Rights Council: the mandate holders receive complaints from affected individuals, irrespective of the exhaustion of local remedies, and can directly address States and other actors by sending letters of allegations requesting information on the alleged violation and future actions. Accountability mechanisms therefore exist at both the national and international levels. For the purpose of the present report, the Special Rapporteur has focused on mechanisms readily available for individuals at the national level and, where relevant, briefly referred to international and regional mechanisms.

10. In view of the various elements of the principle of accountability, the Special Rapporteur has explored the concept through a three-dimensional approach: actors involved in the provision and regulation of water and sanitation services must have clearly defined responsibilities and performance standards (sect. II); actors must provide explanations for and justification of their actions, inaction and decisions to affected populations, which implies access to information in a transparent manner and spaces for interaction between actors and affected people (sect. III); and mechanisms should be in place to oversee and ensure actors' compliance with established standards, impose sanctions and ensure that corrective and remedial action is taken (sect. IV).[10]

II. Who is accountable, who can hold actors accountable and for what?

11. The principle of accountability requires that actors have clearly defined roles, responsibilities and performance standards.[11] These actors are those in a position of authority who can positively or negatively influence the realization of the human rights to water and sanitation through their actions, inaction or decisions. The adequate application of this principle involves clearly defining who is accountable, who can hold actors accountable, and what actors must be accountable for.

A. Actors in the accountability framework

1. Who is accountable and to whom

12. States are accountable to the population in their territory, irrespective of their residential or legal status in that territory, and to those that are affected by the cross-border activities of the State. However, actors involved in water and sanitation service provision or whose conduct may affect the enjoyment of the rights to water and sanitation are not limited to States. As a result of their de facto participation in water and sanitation services, actors other than State may be held accountable for their

[10] Ibid., p. 10.

[11] UNDP Water Governance Facility/UNICEF, *Accountability in WASH: Explaining the Concept*, p. 10.

conduct, in particular when they affect the realization of the human rights to water and sanitation through their influence, decisions, actions or inaction. While in the current report the Special Rapporteur has adhered to the fundamental relationship between actors grounded in international human rights law, which imposes human rights obligations upon States, he has also identified how individuals may directly hold other actors accountable. This follows the rights-based approach, which takes into account the duties of a full range of actors beyond States, including individuals, local organizations, private companies, funders and international institutions.

13. Actors other than States that are accountable in the water and sanitation sector include formal and informal service providers, which range from private companies, NGOs and community-based organizations to individuals involved in service provision. They also include business enterprises that may have an impact on the enjoyment of the human rights to water and sanitation in the course of their operation. Public or private companies may positively influence the development of infrastructure and increase access to public services. However, they can also commit serious human rights abuses or be complicit in their violation. Examples include disconnections when users are incapable of paying, water pollution, over-abstraction and forced displacement of populations owing to megaprojects that affect proper access to water and sanitation services. Bilateral and multilateral funders can also impose a type of service provision or tariff schemes through a series of conditions or funding criteria, with an impact on the enjoyment of human rights, in particular with respect to the affordability of services (see A/72/127). In the present report, those entities are referred to as "other accountable actors", that is, actors other than State that are involved in or affect, through their decisions and actions, the provision of water and sanitation services to individuals and communities.

14. Other accountable actors face multiple accountability demands that are sometimes challenging. For example, NGOs need to report to their donors, and a continuation of funding depends on positive programme results (upward accountability). They also need to be answerable to the people whom they provide services to and to adjust their programmes when necessary (downward accountability). At times, it may be uncertain to what extent NGOs are exercising accountability towards their donors rather than towards the people whom they represent. In addition, regulators are at the interface between policymakers, service providers and users, with corresponding accountability demands. Private companies are accountable to their shareholders, the users of the services that they provide and the people whom their actions affect, which may lead to tensions in terms of which interests should be pursued.

2. Who can hold actors accountable

15. In the framework of the human rights to water and sanitation, rights holders are the legitimate individuals entitled to hold actors accountable for affecting the enjoyment of their rights. Individuals can hold actors accountable directly or delegate that role to members of civil society or other entities (vertical accountability). For example, human rights bodies, including national human rights institutions and ombudspersons, are mandated to seek justice for grievances expressed by rights holders. Individuals can also voice their concerns through civil society networks and user associations.

16. In addition to individual rights holders, other accountable holders such as a State actor with formal authority may request explanations or impose penalties (horizontal accountability). For example, regulators oversee service providers' compliance with the standards of the human rights to water and sanitation and are granted the power to enforce existing regulations so as to ensure the enjoyment of those rights by users (see A/HRC/36/45).

17. Relations among actors in the accountability framework are also influenced by the type of institution mandated to ensure accountability. A national human rights institution may hold a local municipality accountable for a violation or omission relating to the rights to water and sanitation, while international human rights mechanisms interact primarily with central Governments. At the international level, there are several processes that ensure that States and international monitoring bodies engage in an interactive manner, whereby the State is bound to provide information concerning its conduct and may face consequences if it fails to comply with its obligations under a given treaty. These bodies and processes include human rights treaty bodies that monitor the implementation of the core international human rights treaties, the universal periodic review of the human Rights Council, which is a peer-review mechanism that examines the implementation of human rights obligations, and the Compliance Committee under the Protocol on Water and Health, which aims to secure compliance with the obligations under the Protocol.

B. Allocation of roles and responsibilities

1. Governmental institutions

18. Within the governmental institutional framework, the roles and responsibilities related to the rights to water and sanitation are often fragmented among different ministries. In El Salvador, the management of water resources is performed by more than 20 bodies, including municipal authorities, rural water management boards and housing development agencies. Those bodies share the responsibility for distributing and supervising water resources (see A/HRC/33/49/Add.1, para. 25). In Egypt, the responsibility for drinking water and sanitation services straddled several institutions (see A/HRC/15/31/Add.3, para. 12, and A/HRC/15/31/Add.3/Corr.1). The fragmented allocation of roles and responsibilities results in a patchwork of ways by which States address the human rights framework, and it prevents individuals from holding States accountable for their human rights obligations effectively.

19. The responsibility is also shared between the central Government and subnational and autonomous governments. Central Governments generally hold primary responsibility for the planning, programming, regulation and financing of water and sanitation, while municipalities are primarily responsible for providing water and sanitation services to the population. For example, in Mongolia, each local administration is responsible for service provision to households, yet the Ministry of Food, Agriculture and Light Industry oversees the provision of water in pastoral land, in particular to the nomadic population that is dispersed throughout the country (see A/HRC/39/55/Add.2). In some countries, such as Portugal, a centralized State also includes autonomous governments, which have their own regulatory mechanisms and service provision (see A/HRC/36/45/Add.1).

20. The decentralization of service provision and fragmented responsibilities are a matter of concern when responsibilities are transferred from central Governments without a concomitant transfer of resources, knowledge, capacity and corresponding accountability mechanisms. Decentralization may also obscure national accountability mechanisms and hamper clarity as to who is accountable, when it is implemented without a clear allocation of roles and responsibilities. The Government of Spain reported that the decentralization of responsibility for water and sanitation services to the municipal level had resulted in significant heterogeneity, for example, with respect to how the quality control of services was ensured. Such heterogeneity

can be problematic for accountability when other controls or assessments are not planned for at the national level.[12]

21. Another challenge is related to the capacity of local governments. In South Africa, even though water and sanitation services are the competency of local governments, many municipalities, in particular in poor or rural areas, do not have the skills or capacity to implement their mandate.[13] This results in situations where funders bypass the accountability mechanism established by the Government and introduce separate monitoring and control systems,[14] thereby adding additional layers of complexity and making the identification of accountable actors more difficult.

22. As a result of fragmentation, decentralization and lack of coordination, unclear roles and responsibilities can make it difficult for people to know whom to turn to for assistance and whom to hold accountable for realizing their human rights to water and sanitation. In Tajikistan, while complaints may be filed online, by email and by calling emergency telephone numbers, finding out whom to call when users have problems with water and sanitation services seems to be a complicated process (see A/HRC/33/49/Add.2, para. 39).

23. Moreover, corruption flourishes in an environment where roles and responsibilities are unclear or shared among multiple institutions that can shift the responsibility onto one another for failures or non-compliance. Institutional fragmentation and complex funding arrangements, which are typical of the water and sanitation sector, make the sector vulnerable to mismanagement and corruption.[15]

2. Service providers

24. In the context of the provision of services, several elements challenge the identification of accountable actors. First, water and service provision relies on various models of provision ranging from direct services operated by the Government to delegated services operated by private or State-owned providers and small-scale providers without a mandate from the State, often providing challenges in identifying the accountable actor. In addition, there are countries where the water sector is organized into two main levels: first, the bulk level, which includes the activities of water abstraction, treatment and storage and wastewater transport and treatment; and second, the retail level, which covers the distribution of water supply to individual users and the collection of wastewater from users (the case of Portugal exemplifies this situation, see A/HRC/36/45/Add.1). Furthermore, large private service providers sometimes have complex hierarchal structures in place that may make the roles and responsibilities unclear or even not visible to the affected populations.

25. Another challenge related to service provision is the widespread informal provision or self-provision, which leads to situations where users are unable to seek assistance and to hold any actor accountable. For example, in Tuvalu, where freshwater supply mainly relies on rainwater, it is the responsibility of individuals and communities to collect and store rainwater and maintain rainwater tanks. In addition, it is not clear who is responsible for sanitation services, and individuals are often considered responsible for constructing and maintaining their own septic tanks (see A/HRC/24/44/Add.2, para. 9). Informal provision or self-provision is prevalent in areas hard to reach and where populations in vulnerable situations reside. Standards for services set up through regulation therefore only benefit areas that already benefit from formal services, leaving behind those in a more vulnerable situation. Informal

[12] Submission from Spain, answer to question 5 of the questionnaire.

[13] South African Human Rights Commission, *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014* (2014), p. 16.

[14] Water Integrity Network, *Water Integrity Outlook 2016* (Berlin, 2016), pp. 88 and 108.

[15] Ibid., p. 26.

service provision may be problematic in terms of accountability, as informal providers tend to be accountable to consumers only, on the basis of "availability" and price of services. This includes, for example, households supplied by privately managed water points, where water prices are prone to changes depending on scarcity and demand.[16] Informal providers also include organizations that provide free services, as this may dissuade recipients from speaking out when they receive unsatisfactory services, for fear of appearing ungrateful.[17]

26. The responsibility for service provision is sometimes passed on to communities, as observed in community-led total sanitation, a concept introduced to address open defecation in certain communities, urging people to install facilities themselves. The implementation of such an approach has been most effective where Governments have committed to accountability and capacity-building.[18] Moreover, the encouragement of using "shame" or "social stigmatization" as a tool for promoting behaviour change places the responsibility for making an entire area "open-defecation-free" on the community members. Alarmingly, this has led to stigmatizing practices and to extreme instances in which the investigation and punishment of acts of violence against people accused of defecating in the open have reportedly been denied, thereby violating the rights of those people to a remedy and related access to justice.[19] For example, the Clean India Mission is heavily target- and performance-oriented, with a time frame that is very short given the scale of its projected outcomes. Implementation involves intense competition at all levels. As an unintended consequence of the desire to obtain rewards, including the title "open-defecation-free", some aggressive and abusive practices seem to have emerged (see A/HRC/39/55/Add.1, para. 16). While the Special Rapporteur understands the value of placing communities at the centre of water and sanitation projects, he emphasizes that promoters of community-led total sanitation projects must ensure accountability for any human rights violations.

3. Development and humanitarian actors

27. Development cooperation in the water and sanitation sector involves various actors: the funder, the partner State and, when it exists, the implementing entity. The role of funders is significant, as their decisions may have an impact on the realization of the rights to water and sanitation in different ways, depending on the extent to which decisions are based on human rights standards and principles (see A/72/127). The role of implementing entities varies according to their specific role and responsibility, as well as to conditions established in the terms and conditions. In a development project, roles and responsibilities are often shared among those actors and it is often unclear whom to hold accountable, especially in the long term. The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action use the phrase "mutual accountability" to describe the joint obligation that both the State and the development actor share in the development process. For this reason, it is important that projects involve the targeted community and be designed with a clear allocation of roles and responsibilities.

28. A similar challenge exists in the humanitarian sector, where a range of actors, from State and international organizations with different legal status to NGOs, are

[16] J. Koehler and others, "A cultural theory of drinking water risks, values and institutional change", *Global Environmental Change*, vol. 50 (May 2018).

[17] Submission from End Water Poverty in response to the questionnaire.

[18] UNICEF, Plan International and WaterAid, *Second Review of Community-led Total Sanitation in the East Asia and Pacific Region* (Bangkok, December 2015), p. ix.

[19] J. Bartram and others, "Commentary on community-led total sanitation and human rights: should the right to community-wide health be won at the cost of individual rights?", *Journal of Water and Health*, vol. 10, No. 4 (December 2012).

involved in the provision of water and sanitation services as part of their humanitarian assistance (see A/HRC/39/55). In situations of crisis, the roles and responsibilities of related actors — local government, humanitarian actors and development actors — are often unclear, with obscure delimitations of the point when those actors become accountable. In protracted situations, in particular, the boundaries between humanitarian and development interventions are often not clear, and the roles and responsibilities of those actors may therefore leave gaps or overlaps.

C. What are actors accountable for?

29. Affected populations can hold actors to account for failing to adhere to predetermined performance standards or to comply with human rights obligations. It is essential that the normative content of the human rights to water and sanitation and human rights principles be the fundamental basis for performance standards for all accountable actors.

30. First, the standards that actors are accountable for meeting are stipulated in legal and policy instruments by virtue of the State's incorporation of the framework of the human rights to water and sanitation into national laws, policy and regulation. The incorporation of those rights into the national legal and regulatory framework ensures the clarity of performance standards for actors involved in service provision and gives rights holders a legal basis for claiming their rights.

31. Several development actors have embedded the normative content of the human rights to water and sanitation in their policy framework and technical tools that provide guidance (see A/72/127). After analysing six case studies, the Special Rapporteur concluded that funders' policies constitute a heterogeneous patchwork. While some funders' policies consider the human rights framework, in particular the human rights to water and sanitation, others are only sporadically aligned with those rights and reveal varying degrees of clarity regarding their application to development cooperation.

32. Second, performance standards can be placed in a broad spectrum of contractual arrangements between Governments, which formally delegate service provision, and third parties. Similar to regulation, a contract is a proxy tool where the instrument delegating service provision defines the relationship between the public asset owner and the service provider and sets service standards (see A/HRC/36/45). With regard to the specific performance standard that the contractor is accountable for, it is important that contracts, which are normally valid for decades, offer the possibility to be reviewed and adapted over time. This allows States to implement their obligation to protect, directly or through regulatory bodies, and to hold service providers accountable. For example, in Portugal, the Court of Auditors released a report on public-private partnership municipal water services in which it concluded that the majority of concessions benefited the private sector to the detriment of municipal budgets and individual consumers (see A/HRC/36/45/Add.1, paras. 38–41).

33. Third, performance standards are found in internal policies of private service providers, in accordance with the Guiding Principles on Business and Human Rights, which outline that companies should integrate human rights commitments into their policies. An example is the code of ethics established by AquaFed, an international federation representing private water operators, which encourages its members to respect the human right to safe drinking water and to sanitation and to commit to a human rights policy, among others.[20] While not fully based on the human rights framework, some development organizations have developed instruments, for

[20] See www.aquafed.org/MediaAndPublications/CorporateDocuments.sls.

example the WASH Sustainability Charter, to reiterate their commitment to accountability.[21] Other organizations have made a clear commitment to accountability, such as WaterAid, which, in its global strategy for 2015–2020, indicates that it is accountable to those whose lives it hopes to see transformed, to those it works with and to those who support it.[22]

III. Providing explanations and justification

34. The principle of accountability requires States and other accountable actors to be "answerable" to affected population for their actions, inaction and decisions that have an impact on the enjoyment of the human rights to water and sanitation. Answerability refers to the requirement for actors to provide explanations and reasoned justification for their actions, inaction and decisions to the people affected by them, as well as the public at large. Actors can implement answerability in two ways: answering questions and providing information at the request of individuals; and providing information proactively, making the relevant information transparently available and creating open spaces for interactions with rights holders.

35. The first mode of applying answerability guarantees the right of individuals to hold States and other actors accountable by requesting explanations and information about issues ranging from levels and coverage of water and sanitation accessibility, tariffs, the quality of drinking water and environmental impacts to reasons for decisions on policies and programmes. Answers need to satisfy the requests for explanations and information in terms of clarity and timeliness. A genuine explanation requires the use of understandable and clear language and the dissemination of useful information. It also addresses the need for dialogue with rights holders and implies the possibility for the latter to object to the answers provided by the relevant actors. Furthermore, rights holders must be able to assess whether the justification is reasonable and to voice their opinions.

36. The second mode of implementing answerability is a proactive approach whereby States and other accountable actors make relevant information transparent and accessible. States have the obligation to give to individuals and groups full and equal access to information on water, water services and the environment, whether that information is held by public authorities or third parties (see Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 48). In addition, in order to account for how they address their impact on human rights, business entities should be prepared to communicate that information externally, in particular when concerns are raised by or on behalf of affected rights holders (see A/HRC/17/31, paras. 18 and 21).

A. Enabling environment for answerability

1. Monitoring and reporting

37. Actors must provide reasoned justification and explanations for their conduct and decisions to those that they affect, which entails the establishment of mechanisms to collect and analyse relevant information through monitoring and reporting. As an enabling factor of answerability, States and other accountable actors must regularly monitor and report on actions and decisions that they take and provide the justification thereof.

[21] See https://washcharter.wordpress.com/charter/.

[22] See www.wateraid.org/uk/our-global-strategy.

38. Internal monitoring at the national level serves to show progress made in reducing the gaps among served areas, under the principle of progressive realization of human rights using the maximum resources available, as well as to track performance through periodic evaluation. It also involves a process of documenting human rights violations, so that information may be verified and used effectively.

39. Although monitoring human rights is predominantly the responsibility of the State, monitoring by other accountable actors can also provide an important perspective for creating an enabling environment for answerability. In order to identify, prevent, mitigate and account for how they address their adverse impacts on human rights, business enterprises should carry out human rights due diligence (Guiding Principles on Business and Human Rights, principle 17). Water and sanitation service providers and other institutions can set up internal systems to ensure an effective review of decisions and actions. Internal monitoring and evaluation structures may include approaches allowing service providers to assess and report on performance through dialogue with stakeholders. These internal tools and systems include annual reporting by private and public service providers on their planning, performance and spending.

40. Some mechanisms have been set up at the international level to monitor human rights obligations of State parties to a specific treaty. For example, treaty bodies such as the Committee on Economic, Social and Cultural Rights monitor the implementation by State parties of the right to water on the basis of the Committee's general comment No. 15. Other mechanisms oversee the implementation of political commitments, such as the World Health Organization/United Nations Children's Fund Joint Monitoring Programme for Water Supply and Sanitation and the voluntary national reviews of the high-level political forum on sustainable development, to monitor progress in the implementation of the sustainable development agenda. It has to be noted, however, that negotiations about accountability mechanisms at the time of developing the Sustainable Development Goals were tense and eventually led to the use of the phrase "follow-up and review" instead of "monitoring and accountability" in the outcome document.[23]

41. Yet, there are several challenges to proper monitoring and reporting. Whereas formal service providers, that is, those that usually provide access to piped water and sewerage, are able to collect data, informal service providers may not be forthcoming with data on service provision. Data received from formal service providers therefore do not present full and comprehensive information on progress in realizing rights, and this type of information alone is not adequate for States to explain and justify their policy decisions for the purpose of accountability. Support must be provided to small-scale and informal service providers to allow them to collect and provide reliable data about their services, so that accountability for the provision of services may also be extended to areas served by unregulated providers.

42. The collection, compilation and analysis of disaggregated data, as part of monitoring and reporting, are crucial to ensure the answerability dimension of accountability for the enjoyment of the rights to water and sanitation by marginalized groups and populations in vulnerable situations. States and other accountable actors must therefore adopt indicators that cover all the normative content of those rights and disaggregate them by prohibited grounds of discrimination.

[23] K. Donald and S.-A. Way, "Accountability for the Sustainable Development Goals: A Lost Opportunity?", *Ethics & International Affairs*, vol. 30, No. 2 (10 June 2016), p. 205.

2. Empowering individuals

43. The ability to exercise fundamental human rights is a key precondition for rights holders to hold actors to account by requesting information. Participation and access to information can both empower rights holders to influence or question decisions and to voice their needs, demanding accountability for their human rights. Freedom of expression fosters answerability, obliging policymakers to respond to their constituents so that lessons may be learned from past shortcomings and the delivery of services may be improved.[24]

44. Another precondition is removing barriers for individuals to exercise their demands. Individuals face several challenges when lodging complaints, including language and literacy barriers. Rights holders in many countries often indicate that it is easier to demand accountability from the government and other accountable actors at the local level than at the national level, for various reasons, including familiarity with local participatory platforms, travel costs and time spent.[25]

45. Activities initiated by civil society can empower people who have traditionally been excluded or marginalized to claim rights more effectively. Advocacy by civil society may itself generate accountability by increasing the pressure on States and other accountable actors to explain and justify their policies and actions.[26]

3. Combating corruption

46. In the context of answerability, access to information and transparency prevent corruption and can put pressure on government officials to be answerable. Corruption, on the other hand, restrains transparency, and accountability mechanisms can be seriously impeded when corruption blocks the sharing of reliable information among actors.

47. Another related aspect is protection from reprisals. Whistle-blower mechanisms must be in place at the level of government institutions and service providers so that corruption and violations of the rights to water and sanitation may be addressed. For example, in 2014, the mayor of Mexico City created an anti-corruption hotline for citizens and instituted whistle-blower protection.[27]

B. Ways to implement answerability

48. In order to implement answerability, spaces need to be created and mechanisms should be established for interaction between affected populations and States or other accountable actors, where decisions are explained, questioned and justified.

1. Access to information and participation

49. Individuals, by exercising their right to information, can demand of actors to justify their actions or decisions. For adequate implementation, the right to access to

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[24] OHCHR and Centre for Economic and Social Rights, *Who will be accountable? Human Rights and the Post-2015 Development Agenda*, p. 14.

[25] International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights* (Versoix, Switzerland, 2002), pp. 19–22; and End Water Poverty and others, *Global Review of National Accountability Mechanisms for SDG6*.

[26] OHCHR and Centre for Economic and Social Rights, *Who will be accountable? Human Rights and the Post-2015 Development Agenda*, p. 44.

[27] Water Integrity Network, *Water Integrity Outlook 2016*, p. 155, quoting Citiscope, 2015 (see http://archive.citiscope.org/story/2015/mexico-citys-miguel-angel-mancera-cracks-down-corruption). See also Organization for Economic Cooperation and Development, *Integrity Review of Mexico: Taking a Stronger Stance Against Corruption* (Paris, 2017).

information must have a legal basis in national frameworks and should be guaranteed in regulations and contracts with service providers. Adequate resources should be allocated so that information may be made available to all, including through such special measures as translations and audio and sign language material. Laws and regulations must ensure both an effective and timely response to requests for information related to the rights to water and sanitation, and the dissemination of that information through easily accessible channels.

50. Information can be made available in several ways. In Zambia, the Southern Water and Sewerage Company implemented measures for measuring water usage by means of a mobile application, so that water bills are more transparent and less prone to tampering by corrupt staff members.[28] In Brazil, the NGO Article 19 developed a guide to encourage water and sanitation users to gain access to information mechanisms. The guide provides information on how citizens may participate and request information through, inter alia, public consultations, hearings and participatory committees.[29]

51. Participatory mechanisms can provide another venue to implement answerability (see A/69/213). States and other accountable actors should establish participatory mechanisms that allow individuals to express their concerns or become involved in discussions regarding policies and practices that influence access to water and sanitation. Those mechanisms should provide a genuine opportunity for raising concerns and be designed in a way that gives participants the power to influence decisions.

52. A specific example of participatory mechanism is physical public meetings. In Burkina Faso, television viewers are invited during a monthly show to enter into discussions with a minister or the president of the country on issues pertaining to water and sanitation, and the show combines online reporting and monitoring of progress with a live television audience to get feedback or clarification on progress or lack thereof.[30] Nepal offers another example, as local communities could engage in public meetings with service providers, asking them questions about tariffs and the lack of services and demanding answers. This resulted in many service providers taking the complaints of the residents into consideration and modifying their policies accordingly.[31] Other innovative mechanisms involve the use of information and communications technology. In the European Union, a new drinking water directive has recently been proposed, whereby information would have to be available online and via smart applications, which would allow for a systematic analysis of levels of implementation and achievements.[32]

53. However, many practical challenges still exist for people to participate meaningfully (see A/69/213). Even when the right to participation and the freedom to voice dissent formally exist in a country, people may not enjoy those rights in practice. In Mexico, for example, several community representatives, human rights defenders and civil society organizations informed the Special Rapporteur that they had experienced harassment, intimidation, threats or even arrest as a result of their

[28] See www.waterintegritynetwork.net/2017/11/30/swsc-promotes-integrity-zambia/.

[29] Article 19, *Guia Prático de Acesso à Informação em Agua e Saneamento* (Sao Paulo).

[30] Submission from End Water Poverty in response to the questionnaire.

[31] As communicated in a webinar of the Global Partnership for Social Accountability (see http://gpsaknowledge.org/events/what-is-the-role-of-citizens-in-demanding-the-delivery-of-equitable-water-services-wins-experience/#.WpQuGBPwbOS).

[32] European Commission, Proposal for a directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM(2017) 753 final 2017/0332(COD) (1 February 2018), p. 13, art. 14 and annex IV.

complaints or protests relating to access to water and the contamination of water sources (see A/HRC/36/45/Add.2, para. 62).

2. Complaint mechanisms

54. Complaint mechanisms are widely used as a tool to fulfil the answerability dimension of accountability, namely, requesting information, explanations and justification. Individuals can resort to the complaint mechanisms of their water and sanitation service provider when they would like to enquire about certain actions and decisions that have had an impact on their rights to access to water and sanitation services.

55. Actors that affect the enjoyment of the rights to water and sanitation through their conduct should make complaint mechanisms available to rights holders. Those actors include private entities affecting water quality or availability in a certain area, or NGOs that provide services or influence decision-making on water and sanitation projects. They must respond to rights holders' requests and concerns submitted through complaint mechanisms.

56. Governments can implement different complaint mechanisms within the framework of public participation. For example, in the development sector, the German international development agency GIZ works with integrity advisors, an external ombudsperson and a reporting system with compliance officers who may be contacted anonymously by all stakeholders involved, including the public, when rules have reportedly been breached by GIZ.

57. Effective complaint mechanisms may vary from online forms to local kiosks where people may submit a complaint verbally. In Tajikistan, the Governance, Advocacy and Leadership for Water, Sanitation and Hygiene programme implemented by the Water Governance Facility of the United Nations Development Programme and the Stockholm International Water Institute has supported the establishment of public advisory councils and, during dedicated meetings, complaints and requests from consumers are openly presented to the management of the water supply companies, which, in turn, provide explanations and commit to resolving issues.[33] Another example is Aguas de Comayagua, in Honduras, which has set up direct links to receive complaints and claims either in person or by telephone, as well as online and through social networks.[34]

58. Complaint mechanisms and other non-judicial human rights grievance mechanisms should meet the following principles to guarantee credibility and effectiveness: legitimacy, accessibility, predictability, equitability, rights compatibility and transparency.[35]

IV. Compliance through enforceability

59. The enforceability dimension of accountability encompasses two perspectives. First, it refers to a process whereby bodies and mechanisms oversee actors' compliance with standards that are in line with the normative content of the human rights to water and sanitation and human rights principles. In the event that the standards are not met, enforceability mechanisms impose sanctions and ensure that corrective and remedial actions are taken. Second, from the perspective of

[33] See www.watergovernance.org/programmes/goal-wash/tajikistan/.

[34] See servicioaguasdecomayagua.com/.

[35] See www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx.

individuals, enforceability provides a venue to claim the rights to water and sanitation by enforcing actors' compliance and to exercise the right to an effective remedy.

A. Oversight as prerequisite of enforceability

60. As enforcement refers to the ability to oversee actors and apply sanctions when they give unsatisfactory answers, the oversight of actors' conduct to assess whether performance standards are met is a prerequisite to decisions on the application of sanctions.

61. Oversight mechanisms are set up within States — among the executive, the legislative and the judiciary — through the principle of separation of powers, whereby each institution holds the others to account on behalf of the people. Institutions are entrusted with a mandate to oversee other State agencies and private actors. Such institutions include regulators, human rights commissions and institutions, ombudspersons, anti-corruption agencies and State auditing institutions. Those bodies may be mandated to enforce public legal standards with strong fact-finding powers and determine remedies on their own initiative. Others may issue recommendations on corrective and remedial action. For example, the Colombian human rights institution Defensoría del Pueblo has published a study in which it reviewed progress on the realization of the rights to water and sanitation throughout the country and issued recommendations to the Government.[36]

62. At the national level, regulators play a key role in overseeing service providers' compliance with the normative content of the human rights to water and sanitation. As public bodies, regulatory actors are bound by States' international human rights obligations and must be able to collect, analyse and disseminate accurate information on compliance by service providers. In addition, national human rights institutions are mandated to oversee the implementation of and compliance with the human rights to water and sanitation, and civil society organizations also have an important role in verifying adherence to human rights standards by States and other accountable actors. Furthermore, media can play a major role in overseeing the actions of various actors in the water and sanitation sector. They can fulfil a watchdog function and rebalance power asymmetry, despite their lack of power to enforce any outcome of their oversight.

63. Social audits as oversight mechanisms can review official records and allow to determine whether State-reported expenditure reflects actual expenditure on the ground, and can be used as a tool to uncover corruption. An example is citizen report cards or similar mechanisms that allow users to grade the services that they receive. These mechanisms are also used to indicate perceived levels of corruption and for expenditure tracking exercises, social auditing and contract monitoring. Civil society can assess compliance with the human rights to water and sanitation by both State and private service providers. For example, the citizen observatory of public services Observatorio Ciudadano de Servicios Publicos, based in Guayaquil, Ecuador, promotes accountability among private service providers by monitoring whether their practices are in compliance with their contractual obligations and the law. In the event of suspected violations, they file complaints in a variety of forums while simultaneously publicizing them in the local news (see A/HRC/18/33/Add.1, para. 84).

64. With regard to development projects, in situations where the host State fails to provide adequate oversight, funders should improve the accountability of implementing

[36] Defensoría del Pueblo, *Acciones para el Impulso del Derecho Humano al Agua en Colombia: una Mirada al Sector de Agua Potable y Saneamiento Básico* (Bogotá, February 2014).

organizations by setting oversight as a criterion for projects. Funders should make funding less contingent on simplistic assessments of success and link it more closely to the criteria of capacity-building and learning.[37]

B. Enforceability mechanisms

65. There are various ways in which States and other accountable actors may be sanctioned for lack of compliance with their performance standards and individuals may request remedial or corrective actions. In addition to national judicial mechanisms that ensure execution of compliance by law, other non-judicial mechanisms at the national level can positively influence States and other accountable actors, such as media and consumer protection groups. The present report describes judicial and quasi-judicial mechanisms at the national level that individuals may resort to when they want to enforce certain actions or decisions related to their daily problems with water and sanitation services.

1. National judicial mechanisms

66. Although the judicial mechanism is often not the preferred way for rights holders, it is an important option for seeking redress when other mechanisms are exhausted. Not only can litigation serve to provide remedies to victims of violations of the rights to water and sanitation, but it also has the potential to serve the preventive function of accountability, prompt larger discussions on how those rights should be safeguarded in society and effect more transformative policy changes.[38] For this to happen, it is important that courts have the competence to assess cases related to violations of the human rights to water and sanitation and to allow public interest litigation and class actions.

67. Courts play a crucial role in ensuring that rights holders may hold actors other than States accountable for violations of their human rights to water and sanitation, in particular when relevant legislation is in place. In a case in Argentina, a court prohibited a private company from disconnecting the water supply because of non-payment, basing its ruling on article 11 of the International Covenant on Economic Social and Cultural Rights and other human rights instruments directly applicable in that country.[39]

68. Although there is a rise in the numbers of judgments on economic, social and cultural rights, in many jurisdictions some or even many judgments remain unimplemented.[40] In an attempt to ensure compliance, courts may retain supervisory jurisdiction over the enforcement of their rulings and recommendations. They may set up monitoring processes and require periodic reporting by Governments on steps taken to implement decisions. For example, in South Africa, after receiving a complaint about inaccessible toilets on a beach for persons with disabilities, a court ordered the local municipality to adjust the situation on the accessibility and acceptability of toilets within 30 days and to report to the South African Human Rights Commission within two months.[41]

[37] Ainoor Ebrahim, "Accountability In Practice: Mechanisms for NGOs", *World Development*, vol. 31, No. 5 (May 2003), p. 818.

[38] OHCHR and Centre for Economic and Social Rights, *Who will be accountable? Human Rights and the Post-2015 Development Agenda*, p. 40.

[39] Justice of the Peace (Moreno, Buenos Aires), *Usuarios y Consumidores en Defensa de sus Derechos Asociacion Civil v. Aguas del Gran Buenos Aires S.A.*, 21 August 2002.

[40] See https://www.escr-net.org/node/365113.

[41] South African Human Rights Commission, *Boogard vs Kouga Local Municipality, EC*, file reference number: EC/1415/2048, Report, 10 August 2016.

2. Quasi-judicial mechanisms

69. In addition to judicial mechanisms, quasi-judicial mechanisms are another forum for enforceability. Quasi-judicial mechanisms refer to an arbitrator or public administrative agency with the power to determine facts objectively and draw conclusions that will provide the basis for official action.

70. Complaint and dispute resolution mechanisms of international financial institutions may be used by individuals and communities that consider that they have been, or are likely to be, adversely affected by a project. The Special Rapporteur stresses that States represented on the boards of the World Bank and other development banks should make sure that their internal safeguards are guided by international human rights standards, including the human rights to water and sanitation. This would allow affected populations to seek effective remedies for projects that violate their rights.

71. Regulatory bodies provide another avenue to safeguard the process to submit complaints when the enjoyment of the rights to water and sanitation has been compromised. A growing number of independent regulatory bodies have established complaint mechanisms for the resolution of disputes between service providers and users (see A/HRC/36/45, para. 81). These bodies are often located at the local level and are therefore generally more easily accessible than courts. In the resolution of complaints against service providers, regulatory actors must ensure full disclosure of information on the proposed measures, reasonable notice of proposed actions, legal recourse and remedies for the individual affected and legal assistance for obtaining legal remedies (see Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 56).

72. Regulators can use various mechanisms to enforce standards, including incentives, warnings, penalties for non-compliance (such as fines), denial of permits, issuing injunctions, increased inspections and the possibility of revoking contracts (see A/HRC/15/31, para. 52). For example, in Kenya, the Water Services Regulatory Board may recommend the removal of boards of directors and top management and ultimately withdraw licences.[42] However, it is a matter of concern that State governance structures can be weak and that regulators may lack the ability or means to ensure that rules are followed.

73. National human rights institutions can often receive complaints, investigate and recommend changes when systemic violations of the rights to water and sanitation are found. Scrutinizing the State's obligation to fulfil those rights, however, can be a challenge. In some cases, national human rights institutions have the mandate to address business-related grievances related to the rights to water and sanitation.[43] In the Plurinational State of Bolivia, the ombudsperson may handle complaints against private providers, including those of water and sanitation services. In case of an investigation, the ombudsperson issues recommendations and suggestions, and the authorities are required to inform him or her of the measures that they have taken to remedy the problem. Human rights institutions must have the capacity to monitor the rights to water and sanitation and to apply a coherent analytical framework when assessing the State's compliance with its obligation to fulfil those rights. In 2015, a manual was developed by the Asia-Pacific Forum of National Human Rights Institutions to strengthen the capacity of national human rights institutions to hold the

[42] Kenya, Water Act, 2002 No. 8 of 2002, Licence for Provision of Water Services, clause 10.3, para. 3.

[43] OHCHR, "Business and Human Rights: A Survey of NHRI Practices, Results from a Survey Distributed by the Office of the United Nations High Commissioner for Human Rights", 2008.

State and its institutions accountable for the fulfilment of the rights to water and sanitation.[44]

C. Enabling environment and challenges

74. Marginalized people and people in vulnerable situations often lack the capacity and opportunities to hold actors accountable for the failure to uphold the rights to water and sanitation or for violations and abuses of those rights. Enforceability mechanisms are mostly used by individuals who are already aware of such mechanisms and who can afford the costs and the time spent using them.

75. It is vital that rights holders be made aware that, when the complaint has not been resolved through the complaint mechanisms of their service provider, there are other opportunities that they can turn to immediately thereafter. Accountable actors should actively refer people to other mechanisms, including judicial and quasi-judicial mechanisms, if complaints cannot be resolved by the accountable actor. Ofwat, the economic regulator of the water sector in England and Wales, explains on its website that consumers that are not happy with the result of the complaint procedure may resort to their local Consumer Council for Water committee to investigate, and provides the relevant contact details.[45]

76. Furthermore, owing to the collective nature of the water and sanitation services, it is important that judicial and quasi-judicial bodies allow relevant cases to be brought before them by individuals, their representatives, third parties, NGOs, associations of trade unions or any other representative organizations. It is often easier for rights holders to voice their concerns and hold actors accountable collectively, for example through civil society organizations, consumer protection groups and water users organizations. In Kenya, for example, a case was submitted to the High Court with the support of Hakijamii, a human rights organization based in Nairobi, following a request by more than 1,000 individuals who had been evicted from their homes and, as a result, had suffered from lack of water and sanitation.[46] In Sweden, perfluoroalkyl and polyfluoroalkyl substances originating mainly from fire foam were found in drinking water. As a result, an NGO sued the private water supplier and claimed damages for the effects of those substances on the health of consumers.[47]

77. Strategies related to soft enforcement are also an important tool for obtaining formal enforcement. Human rights institutions, ombudspersons, NGOs and civil society organizations play a crucial role in ensuring compliance with judgments and recommendations, as they put pressure on Governments to provide remedies.[48]

78. Several remaining challenges need to be addressed. One challenge in ensuring the effectiveness of enforceability mechanisms is that, in some jurisdictions, human rights to water and sanitation are not justiciable, that is, not amenable to be

[44] Asia Pacific Forum of National Human Rights Institutions and the Center for Economic and Social Rights, *Defending Dignity: A Manual for National Human Rights Institutions on Monitoring Economic, Social and Cultural Rights* (Asia Pacific Forum of National Human Rights Institutions, Sydney; Center for Economic and Social Rights, Brooklyn, New York, January 2015).

[45] See https://www.ofwat.gov.uk/regulated-companies/investigations/ofwat-regulating-the-industry-monitoring-and-casework-whistleblowing-whistleblowing/.

[46] Kenya High Court, Constitutional Petition No. 2 of 2011 (Garissa), 23 June 2011.

[47] Submission from Sweden in response to the questionnaire.

[48] B. Cali and N. Bruch, *Monitoring the implementation of judgments of the European Court of Human Rights: A Handbook for Non-Governmental Organisations* (May 2011), p. 6. Examples include the International Network for Economic, Social and Cultural Rights (see https://www.escr-net.org/monitoring).

adjudicated in judicial or quasi-judicial forums. It is crucial that national laws provide a clear guarantee to individuals and groups who are potentially victims of a violation of their rights to water and sanitation, so that they may be able to file a complaint before a judicial body, request legal remedies and have those remedies enforced. Justiciability of the human rights to water and sanitation is an essential precondition for ensuring the effectiveness of judicial and quasi-judicial mechanisms as part of the enforceability dimension of accountability.

79. Another challenge is the lack of trust in available mechanisms. As observed in the report of the Special Rapporteur on his mission to Mexico, many individuals, especially those in vulnerable situations, do not trust the authorities, as many cases of violations of the human rights to water and sanitation do not reach tribunals, and substantive jurisprudence on those rights has been limited in comparison with other rights (see A/HRC/36/45/Add.2, para. 60). Attention must be paid to strengthening follow-up to rulings and ensuring the provision of remedies, so that violations and abuses do not go unpunished and trust may be restored.

80. Imposing certain sanctions, such as the withdrawal of licences, is challenging in a sector where there is often no alternative service provision, as the sanction may ultimately affect the users.[49] A solution for this was sought in Peru where a new law stipulates that service providers failing to attain a certain level of performance and good governance indicators fall under a transition regime, during which a separate institution controls the provider, which receives intensive support to facilitate a quick improvement of its performance.[50]

V. Conclusion and recommendations

81. **The principle of accountability is a core and a cross-cutting human rights principle. With the essential aim of balancing power to protect the most marginalized and those living in vulnerable situations, the principle of accountability can be used as a mechanism to hold States and actors other than States accountable for actions, inaction and decisions that affect the enjoyment of the human rights to water and sanitation. Similar to the concept of human rights, the concept of accountability is dynamic and evolving in nature, and requires a contextual analysis.**

82. **Accountability mechanisms in the water and sanitation sector exist at the local, national, regional and international levels. Some mechanisms may be directly accessible to affected populations, while others may require representatives to act on behalf of those populations. In the present report, the Special Rapporteur has focused on mechanisms that individual users may have direct access to for their everyday concerns related to water and sanitation services. The complexity of actors in the water and sanitation sector and its specificities imply that the traditional State-centred human rights framework leaves gaps in the existing accountability mechanisms. Furthermore, the Special Rapporteur has observed that accountability mechanisms often face challenges and that, in practice, they are often lacking altogether. As a result, when the rights to water and sanitation are affected, it is not always clear to whom related action may be attributed, why such action was taken, how sanctions may be enforced against those who caused harm or how to remedy the situation.**

[49] Submission from Germany in response to the questionnaire.

[50] Peru, Framework Law on the Management and Provision of Sanitation Services, as amended by Supreme Decree N° 008-2018-VIVIENDA of 18 May 2018.

83. **Consequently, the Special Rapporteur has identified the need to strengthen the three dimensions of accountability in the water and sanitation sector: roles, responsibility and performance standards; providing explanations and justification; and enforcement mechanisms for compliance. In order to establish an adequate accountability framework for affected populations, the Special Rapporteur has put forward one set of recommendations for States and another for all accountable actors, that is, States and other actors involved in the provision of water and sanitation services or whose actions, inaction and decisions affect access to water and sanitation services.**

84. **First, the adequate implementation of accountability requires a clear definition of who is accountable, who may hold actors accountable and what actors must be accountable for. Affected populations can hold States and other accountable actors to account for failing to adhere to predetermined performance standards or to comply with human rights obligations. Yet, the challenge lies in the difficulty of ascertaining who is accountable for access to water and sanitation services, particularly given the often complex architecture of governmental institutions in that sector, the involvement of private and informal service providers, the existence of regulators and situations where no one is identified as accountable.**

85. **For the first dimension on roles, responsibility and performance standards, the Special Rapporteur recommends that all accountable actors, including States, international organizations, bilateral and multilateral funders, non-governmental organizations (NGOs), private and informal services providers, independent regulators, transnational and national companies:**

(a) **Clearly identify the roles and responsibilities of entities whose influence, actions, inaction and decisions affect the provision of water and sanitation services, making those roles and responsibilities transparent and clear to the affected individuals;**

(b) **Ensure that resources, knowledge, capacity and corresponding accountability mechanisms are properly transferred when roles and responsibilities are transferred from one actor to another;**

(c) **Adopt the normative content of the human rights to water and sanitation and human rights principles as the fundamental basis for performance standards;**

(d) **Prioritize the provision of water and sanitation in line with the human rights to water and sanitation in situations of multiple accountability demands.**

86. **Specifically, States should:**

(a) **Establish clear coordination mechanisms within governmental institutions so that individuals do not need to resort to multiple actors in the Government to claim their rights;**

(b) **Strengthen the capacity of local governments and service providers to implement their mandates through a clear accountability process;**

(c) **Clearly allocate, define and attribute the responsibilities of all stakeholders involved in the water and sanitation sector in accordance with the framework on the human rights to water and sanitation, and regulate the implementation of those responsibilities;**

(d) **Identify informal service providers of water and sanitation services to individuals and communities and put in place regulations for those providers, making accountability mechanisms available;**

(e) When responsibilities for service provision are transferred to communities, ensure that accountability measures for any human rights violations that may occur owing to aggressive and abusive practices are in place.

87. Second, the provision of explanations and justification requires, on the one hand, that States and other accountable actors be able to answer questions and provide the information requested by individuals, in particular those marginalized and those in vulnerable situations who need to be empowered to request information and actively ask questions. On the other hand, States and other accountable actors should proactively and systematically provide information, in a transparent manner, as well as open spaces for interactions with affected populations. Both aspects rely on an effective and explicit human rights framework that upholds the right to information, participation, monitoring and reporting, in conjunction with advocating transparency and other principles to combat corruption.

88. For the second dimension of providing explanations and justification, the Special Rapporteur recommends that all accountable actors, including States, international organizations, bilateral and multilateral funders, NGOs, private and informal services providers, independent regulators, transnational and national companies:

(a) Regularly take note of and record actions and decisions taken and the justification thereof, including through setting up internal systems for an effective review of decisions and compliance with performance standards;

(b) Maintain clear and effective mechanisms to respond to requests and concerns from affected populations, giving timely answers to requests for information and explanations and ensuring clarity (by means of understandable and plain language) and that the information provided is useful;

(c) Facilitate the exchange of information in the form of dialogues or participation whereby affected populations may assess whether the information that they have received is reasonable, voice their opinions and be able to influence relevant decisions without language barriers;

(d) Regularly publish information on decision-making processes related to water and sanitation;

(e) Adopt indicators that cover all the normative content of the rights to water and sanitation and that are disaggregated by prohibited grounds of discrimination, while setting specific benchmarks in relation to each indicator.

89. Specifically, States should:

(a) Provide support to small-scale and informal service providers to allow them to monitor their own service provision;

(b) Legally guarantee the exercise of fundamental human rights, such as freedom of expression, right to information and participation, among others, which are a precondition for affected populations to hold actors accountable;

(c) Guarantee the process of complaint mechanisms in regulatory frameworks and concession contracts when provision is delegated.

90. Third, enforceability is critical to ensure the accountability of actors by imposing sanctions and remedial actions for violations and abuses by those actors. This is preceded by a process whereby bodies and mechanisms oversee actors' compliance with performance standards that are in line with the normative content of the human rights to water and sanitation. At the national level, judicial and quasi-judicial mechanisms serve as a means for affected

populations to hold States and other accountable actors to account. However, this needs to be complemented by an enabling environment that empowers the affected populations to lodge claims and that builds trust and effectiveness in the accountability mechanisms.

91. **With regard to the third dimension, namely, compliance through enforceability, the Special Rapporteur recommends that all accountable actors, including States, international organizations, bilateral and multilateral funders, NGOs, private and informal services providers, independent regulators, transnational and national companies:**

(a) **Establish an effective oversight system to trace the conduct of actors in the water and sanitation sector and to assess whether performance standards are met;**

(b) **Assess and address barriers faced by marginalized people and people in vulnerable situations to resort to a judicial or quasi-judicial mechanism, eliminating institutional, physical, economic, social or other barriers;**

(c) **Ensure that affected populations are made aware of the fact that, when complaints are not resolved through the mechanisms of their service provider, other enforcement mechanisms are available.**

92. **Specifically, States should:**

(a) **Ensure that all elements of the human rights to water and sanitation and human rights principles are included in the legal framework, so that the human rights to water and sanitation are justiciable and affected populations have a legal basis for their claims;**

(b) **Devise a mechanism that would enforce decisions on other accountable actors by interpreting national laws in a way that allows proceedings against those actors that are responsible for human rights violations and abuses.**